

1 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

2 STATE OF HAWAII

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4 SPORTS SHINKO (USA) CO., LTD., a Delaware

5 Corporation; SPORTS SHINKO (MILILANI)

6 CO., LTD., a Hawaii corporation, et al.,

7 Plaintiff,

8 vs. Case No. 02-1-2766-11 (EEH)

9 RESORT MANAGEMENT SERVICES

10 (HAWAII), INC., a Hawaii corporation,

11 YASUO NISHIDA, SATOSHI KINOSHITA, et al.

12 Defendants.  
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14  
15 DEPOSITION OF SATOSHI KINOSHITA

16 (Volume I)  
17

18 Taken on behalf of the Plaintiff at Alston Hunt Floyd &  
19 Ing, 1001 Bishop St., ASB Tower, 18th Floor, Honolulu,  
20 Hawaii 96813, commencing at 9:08 a.m., Tuesday, April  
21 19, 2005, pursuant to Notice.

22  
23 BEFORE: BARBARA ACOBA, CSR No. 412, RPR

24 Notary Public, State of Hawaii

25 EXHIBIT Q

1 APPEARANCES:

2 For Plaintiff: GLENN MELCHINGER, Esq.  
3 ALSTON HUNT FLOYD & ING  
4 ASB Tower  
5 1001 Bishop St., 18th Floor  
6 Honolulu, Hawaii 96813

7  
8 For Defendant SATOSHI KINOSHITA:

9 JOHN KOMEIJI, Esq.  
10 WATANABE ING KAWASHIMA & KOMEIJI  
11 First Hawaiian Center  
12 999 Bishop St., 23rd Floor  
13 Honolulu, Hawaii 96813

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15  
16 Also Present: STEVEN SILVER - Interpreter  
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1 with an outfit called Insigna that -- no, actually, it  
2 was Hotel Partners. Ron Watanabe, if I'm not mistaken.

3 Q. And that was around 1996?

4 A. Yes.

5 Q. You testified you were instructed to sell  
6 Diamond Head Beach Hotel; is that right?

7 A. Yes.

8 Q. By who?

9 A. The president of the company.

10 Q. Did he give any reason why you should sell  
11 Diamond Head Beach Hotel?

12 A. I don't really recall. However, in Japan it's  
13 not considered very polite to object to or question the  
14 instructions you receive from the president of a  
15 company. And in the case of our company, the president  
16 was essentially like a sole shareholder. He wielded  
17 complete authority, so it was even more the case in our  
18 particular company.

19 And in addition to that, when I joined the  
20 company in 1991, I was told by the president of the  
21 company that given the fact that I was his child, that  
22 if I didn't listen to him, then none of the other  
23 employees and officers of the company would want to  
24 listen to him. So, no, I didn't question the president  
25 about the reasons behind what he was instructing me to

1 do.

2 Q. When you were acting as a director of the  
3 Sports Shinko Japan company and were still living in  
4 Japan, as part of your work for the, what do you call  
5 it, financial analysis department, did you review  
6 financial statements for the golf courses that were in  
7 your -- within your block, within the block for which  
8 you were the area manager?

9 A. No.

10 Q. What kind of financial information did you  
11 review? Was it the same type of information you  
12 reviewed for the Hawaii subsidiaries?

13 A. While I don't recall clearly, I believe that  
14 the information I reviewed was more general than the  
15 information that I was reviewing with respect to the  
16 Hawaii subsidiaries. Well, in particular, as it applied  
17 to the situation in Japan, as an area manager all that  
18 individuals in that position would do would be to  
19 examine up to the point of operating profit. That is to  
20 take a look at the sales generated by operations and to  
21 deduct from that the various costs incurred in  
22 operations. And so we would essentially review  
23 operating results, if you will, up to the point of  
24 operating profit and we didn't have knowledge, for  
25 instance, with respect to debts. We would just take a

1 Q. That's what I'm asking you, what types of  
2 direction did he give you, the president give you, about  
3 anything about the Hawaii properties? Let me ask it  
4 this way: What's the scope of your authority versus the  
5 president's authority?

6 A. I had virtually zero in the way of authority.  
7 I would consult with the general managers of the various  
8 golf course and hotel properties and then look to the  
9 president to make decisions.

10 Q. So back to my original question, so the scope  
11 of the president's decision making authority was almost  
12 plenary; is that right?

13 A. Yes. He had -- yes, virtually plenary  
14 authority.

15 Q. He would leave or would he leave day-to-day  
16 management decisions to Jerry Kimoto or the managers of  
17 the individual properties, for example?

18 A. He would leave minor decision making to them,  
19 yes.

20 Q. But for bigger strategic or bigger business  
21 decisions, he would give the direction first to you and  
22 then it would -- break this down, the president would  
23 make the bigger business decisions regarding the Hawaii  
24 assets, yes?

25 A. Yes.

1 (Exhibit 29 marked for identification)

Note: Deposition Exhibit 29, which is also referred to below as "P & S agreement", is attached as Exhibit S to CSOF (excerpts)

2 BY MR. MELCHINGER:

3 Q. Showing you what's been marked as Exhibit 29 to  
4 your deposition, and wonder if you recognize this  
5 document?

6 A. I do.

7 Q. Okay. And what is this document, please?

8 A. This is the purchase and sale agreement between  
9 Sports Shinko and the KG Group for the hotel and the  
10 golf courses.

11 MR. KOMEIJI: Again, we rely upon you that this  
12 is a complete set. Again, no inferences are being  
13 drawn, I just put that for the record.

14 MR. MELCHINGER: I understand. And I'll  
15 represent for the record that this is taken from the  
16 McCorriston's files, again, that were produced to us in  
17 response to a Rule 2004 exam in the Section 304  
18 proceeding in the Bankruptcy Court.

19 BY MR. MELCHINGER:

20 Q. On pages 27 and 28, is that your signature that  
21 appears on those pages?

22 A. Yes.

23 Q. And you're signing on behalf of all the Sports  
24 Shinko companies that are party to this agreement; is  
25 that right?

1           A.    Yes.   I was instructed to sign by the  
2   president.

3           Q.    Now, this was on the 15th and the closing was  
4   scheduled, I think you said, for the 28th in the  
5   agreement.   Between -- well, during that 13-day period  
6   or so, what do you recall about the negotiations with  
7   KG, if anything, to assume the management agreements  
8   with RMS?

9           A.    Well, RMS was a separate and independent  
10   third-party entity, if you will, and so all that I did  
11   was that I recommended that if it was okay with the  
12   other side, that we'd like to see them continue to use  
13   RMS as RMS had been managing Sports Shinko's hotels and  
14   golf courses.

15          Q.    How involved were you with the negotiations  
16   with KG on that issue, the assumption of the RMS  
17   management agreements?

18          A.    To the best of my recollection, that did not  
19   take place during the roughly 13 days between the date  
20   of the signing of the contract and the date of the  
21   closing, but took place prior to that.

22                (Exhibit 30 marked for identification.)

23   BY MR. MELCHINGER:

24          Q.    Show you what's been marked Exhibit 30 to your  
25   deposition.   Tell me if you've seen that before, please.

1 with the president; is that right?

2 A. Yes.

3 Q. It says he was at an undisclosed hotel. Was  
4 that a hotel in Japan or in Hawaii?

5 A. Japan.

6 Q. And it says he asked you to send the P and S  
7 agreement. That was the purchase and sale agreement  
8 with KG; is that right?

9 A. Yes.

10 Q. Did you translate the agreement for him?

11 A. Yes.

12 Q. And this is before it was signed; is that  
13 right?

14 A. Yes.

15 Q. So you sent him, was it a full Japanese  
16 translation or an abbreviated Japanese translation?  
17 What did you send to him?

18 A. I sent him both a summary and a full  
19 translation.

20 Q. And at this time he said he was -- did he say  
21 he was negotiating with the RCC?

22 A. Yes.

23 Q. And he needed something from you to show to the  
24 RCC; is that right?

25 A. Yes.